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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DANON COREY DAVIDSON,

Defendant and Appellant.

F074311

(Super. Ct. Nos. VCF284960,
VCF261737, VCF315456A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Lloyd L. Hicks, Judge. (Retired Judge of the Tulare Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Karriem Baker, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Franson, J. and DeSantos, J.

Appointed counsel for defendant Danon Corey Davidson asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed and we received no communication from defendant. We grant counsel's request that we exercise our discretion to deem defendant's motion below as a petition for writ of mandate and review its denial. (See *People v. Picklesimer* (2010) 48 Cal.4th 330, 340 ["Assuming the pleading that has been filed meets or can be amended to meet the prerequisites for a petition for writ of mandate, a court in its discretion may treat a motion or a petition for a different writ as a mislabeled petition for writ of mandate."].) Finding no arguable error, we affirm.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On May 28, 2015, defendant was convicted by bench trial of manufacturing a controlled substance (Health & Saf. Code, § 11379.6, subd. (a)). The trial court found true the allegation that defendant had suffered a prior felony conviction within the meaning of the "Three Strikes" law (Pen. Code,¹ §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Additionally, because of the current offense, defendant was found in violation of his probation in case Nos. VCF261737 and VCF284960.

On June 25, 2015, the trial court sentenced defendant in all three cases—the current case and the two violation of probation cases. In the current case, the court imposed 10 years in prison, and awarded 188 days of credit under section 4019 (94 actual and 94 conduct).

¹ Statutory references are to the Penal Code unless otherwise noted.

In case No. VCF261737, the court imposed the previously suspended term of three years, to be served concurrently. The court awarded 293 days of credit under section 4019 (147 actual and 146 custody).

In case No. VCF284960, the court imposed the previously suspended term of three years, to be served concurrently.² The court awarded 541 days of credit under section 4019 (271 actual and 270 custody).

On July 28, 2016, defendant filed a motion to conform the judgment to the plea, arguing that California Department of Corrections and Rehabilitation was not awarding him the half-time credits for his state prison commitment. He argued he bargained for these credits in his plea agreement, and the trial court promised him the credits at sentencing. He asked the trial court to direct the award of such credits.

In opposition, the prosecutor argued the trial court's statement that defendant would receive "half-time" custody credits was not enforceable because defendant was not eligible due to his prior conviction for a serious felony (§ 667, subd. (c)(5)).³ The trial court awarded credits under section 4019 for time spent in presentence custody, but those credits were not available to a prisoner serving a sentence. In addition, the prosecution pointed out that defendant had been convicted by trial, not by plea, in the current case, and his two prior plea agreements were no longer enforceable because defendant had violated probation in both cases. Thus, no plea agreement existed.

On August 24, 2016, the trial court denied defendant's motion.

² The abstract of judgment was ordered amended to reflect this sentence on May 3, 2016.

³ Section 667, subdivision (c)(5) provides: "Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions as defined in subdivision (d), the court shall adhere to each of the following: [¶] ... [¶] (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison."

On August 26, 2016, defendant filed a notice of appeal.

DISPOSITION

The order denying the petition for writ of mandate is affirmed.